

1

2

3

4

5

6

7

8

9

10

11

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NATHANIEL WHALEY,

Plaintiff,

v.

NATIONAL ASSOCIATION OF REALTORS®; LAS VEGAS REALTORS®; NEVADA REALTORS; SIERRA NEVADA REALTORS; INCLINE VILLAGE REALTORS®; ELKO COUNTY REALTORS; MESQUITE REAL ESTATE ASSOCIATION; GREATER LAS VEGAS MLS; NORTHERN NEVADA REGIONAL MLS; JASON MITCHELL GROUP; OPENDOOR BROKERAGE LLC; eXp REALTY; BERKSHIRE HATHAWAY HOMESERVICES NEVADA PROPERTIES; SIMPLY VEGAS; URBAN NEST REALTY; LUXURY HOMES OF LAS VEGAS; HUNTINGTON AND ELLIS, KELLER WILLIAMS SOUTHERN NEVADA; KELLER WILLIAMS VIP; KELLER WILLIAMS REALTY LAS VEGAS; KELLER WILLIAMS

Case No.: 2:24-cv-00105-ART-MDC

ORDER GRANTING (ECF No. 28)

**JOINT STIPULATED MOTION¹
TO STAY PROCEEDINGS
PENDING DETERMINATION OF
MOTION TO TRANSFER BY
THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

26

27

28

¹ This paper is styled as a stipulated joint motion pursuant to LR 7-2 rather than a stipulation for the sole reason that Defendants have yet to be served with process and it is unclear when those named Defendants who are not signatories to this Joint Motion intend to appear in this action. The undersigned are unaware of any objection to the relief requested in this Joint Motion from any non-signatory Defendant.

1 REALTY THE MARKETPLACE; ENGELS &
2 VOLKERS LAKE TAHOE; DOUGLAS
3 ELLIMAN OF NEVADA; REDFIN
4 HOMESERVICES LLC; REDFIN
CORPORATION; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

5 Defendants.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Defendants National Association of Realtors®, Nevada Realtors®, Sierra Nevada
2 Realtors®, Incline Village Realtors®, and Northern Nevada Regional Multiple Listing
3 Service, Inc. (collectively, “Signing Defendants”), and Plaintiffs, on behalf of themselves
4 and all others similarly situated (collectively, “Plaintiffs”), hereby consent and stipulate to
5 stay all proceedings and deadlines in this action, including as to those named Defendants
6 who are not Signing Defendants, until after the U.S. Judicial Panel on Multidistrict
7 Litigation rules on the pending motion to transfer under 28 U.S.C. § 1407. *See generally In*
8 *re Real Estate Commission Antitrust Litigation*, MDL No. 3100 (J.P.M.L. Dec. 27, 2023).
9 In addition, Defendants Las Vegas Realtors®, Greater Las Vegas MLS, Douglas Elliman
10 of Nevada, and Berkshire Hathaway HomeServices Nevada Properties (together with
11 Signing Defendants, the “Stipulating Defendants,” and the Stipulating Defendants with the
12 Plaintiffs, the “Stipulating Parties”), consent to the stay requested herein but have not yet
13 retained local counsel and thus cannot join this motion. This is the first stipulated motion
14 for a stay of deadlines in this case. In support of this stipulated motion, the Stipulating
15 Parties provide as follows:

16 1. Plaintiffs filed a Class Action Complaint (ECF No. 1) against Stipulating
17 Defendants and other Defendants on January 15, 2024.

18 2. Plaintiffs filed a First Amended Class Action Complaint (the “Amended
19 Complaint”) (ECF No. 6) on January 25, 2024.

20 3. Stipulating Defendants have not yet been served with the Amended
21 Complaint.

22 4. Upon information and belief, some other Defendants named in this action
23 have not yet retained counsel.

24 5. The Amended Complaint includes, among other claims, a claim under
25 Section 1 of the Sherman Act based generally on allegations that Defendants, among others,
26 have engaged in a conspiracy to require sellers of residential property to make inflated
27 payments to the brokers or agents representing buyers. ECF No. 6 ¶¶ 54-55.

1 6. As of the date of this filing, this action is one of over twenty-two (22) known
2 putative class actions alleging similar conspiracies under Section 1 of the Sherman Act
3 presently pending in fifteen (15) federal districts throughout the country.

4 7. As of the date of this filing, the Stipulating Parties are aware that one or more
5 of the Defendants (and/or their affiliates) is named in several of these other lawsuits, in
6 United States District Courts in California, Georgia, Illinois, Missouri, South Carolina, and
7 Utah, asserting similar claims under Section 1 of the Sherman Act based on similar alleged
8 conspiracies.

9 8. On December 27, 2023, the plaintiffs in two actions pending outside of this
10 Court—*Gibson v. Nat'l Ass'n of Realtors*, No. 4:23-cv-00788 (W.D. Mo. Oct. 31, 2023),
11 and *Umpa v. Nat'l Ass'n of Realtors*, No. 4:23-cv-00945 (W.D. Mo. Dec. 27, 2023)—filed
12 a motion pursuant to 28 U.S.C. § 1407 (the “MDL Motion”) before the U.S. Judicial Panel
13 on Multidistrict Litigation (the “Panel”) to transfer cases to the U.S. District Court for the
14 Western District of Missouri for coordinated or consolidated pretrial proceedings. See MDL
15 No. 3100 at ECF No. 1.

16 9. On February 16, 2024, the Clerk of the Panel issued a Hearing Order
17 designating MDL No. 3100 for oral argument to be held on March 28, 2024. MDL No. 3100
18 at ECF No. 394.

19 10. Plaintiffs and Stipulating Defendants have conferred and agreed that judicial
20 efficiency would be best served by suspending, for a short period of time, the deadline for
21 Defendants to answer, move to dismiss, or otherwise respond to the Complaint.

22 11. Any delay arising from a stay is likely to be short, and no significant
23 prejudice to Plaintiffs would result from a short stay.

24 12. A stay is likely to conserve judicial resources, as well as the Stipulating
25 Parties’ resources, until the Panel decides whether (and if so, where) to transfer the cases
26 for coordinated or consolidated proceedings.

1 13. Similar orders for stays or extended deadlines pending the ruling from the
2 Panel have been entered in other cases that the Panel will consider for coordinated or
3 consolidated pretrial proceedings, including the following:

- 4 • Order of Administrative Closure, *Nosalek v. MLS Property Information*
5 *Network, Inc.*, No. 1:20-cv-12244 (D. Mass. Feb. 14, 2024), ECF No. 288;
- 6 • Text Order Granting, In Part, Consent Motion to Stay, *Burton v. National*
7 *Association of Realtors*, No. 7:23-cv-05666 (D.S.C. Feb. 9, 2024), ECF No.
8 22;
- 9 • Minute Entry Granting Defendant's Unopposed Motion for a Stay Pending
10 JPML Determination, *Tuccori v. At World Properties, LLC*, No. 1:24-cv-
11 00150 (N.D. Ill. Jan. 29, 2024), ECF No. 14;
- 12 • Order Granting Joint Motion to Stay Proceedings Pending Determination of
13 Motion to Transfer, *Masiello v. Arizona Association of Realtors*, No. 2:24-
14 cv-00045 (D. Ariz. Feb. 2, 2024), ECF No. 39;
- 15 • Minute Order Staying Case, *Fierro v. National Association of Realtors*, No.
16 2:24-cv-00449 (C.D. Cal. Feb. 16, 2024), ECF No. 123; and
- 17 • Order Granting the Parties' Joint Motion for a Stay of Proceedings,
18 *Friedman v. The Real Estate Board of New York, Inc.*, No. 1:24-cv-00405
19 (S.D.N.Y. Feb. 20, 2024), ECF No. 56.

20 14. In making this Stipulation, Stipulating Defendants do not waive, in this or
21 any other action, any (i) defenses or arguments for dismissal that may be available under
22 Fed. R. Civ. P. 12; (ii) affirmative defenses under Fed. R. Civ. P. 8; (iii) other statutory or
23 common law defenses that may be available; or (iv) rights to seek or oppose any
24 reassignment, transfer, or consolidated alternatives. Stipulating Defendants expressly
25 reserve their rights to raise any such defenses (or any other defenses) in response to either
26 the Complaint or any original, amended, or consolidated complaint that may be filed in this
27 or any other action. Neither Plaintiffs nor Stipulating Defendants waive any objections to
28 the MDL Motion and expressly reserve their rights to oppose the motion, to argue that this

1 case be excluded from consolidation, or to argue that related cases should be transferred to
2 a U.S. District Court other than the Western District of Missouri.

3 15. Stipulating Defendants do not waive any rights to arbitration or other forms
4 of alternative dispute resolution, and expressly reserve and assert, and do not waive, their
5 binding arbitration rights. Stipulating Defendants reserve the right to file formal motions
6 asserting these rights at each phase of litigation.

7 16. Stipulating Defendants do not waive any rights to enforce provisions of any
8 applicable agreements including class waiver provisions and/or limitations periods, and
9 expressly reserve and assert, and do not waive, their binding and enforceable rights.
10 Stipulating Defendants reserve the right to file formal motions asserting these rights at each
11 phase of litigation.

17. Plaintiffs and the proposed class expressly reserve all rights available.

13 18. Therefore, for good cause and not for purposes of delay, the Stipulating
14 Parties stipulate and agree that this Court may enter an Order suspending the deadline for
15 all Defendants to answer, move to dismiss, or otherwise respond to the Amended Complaint,
16 and stay the entire case, until the later of (i) 30 days after the Panel rules on the pending
17 MDL Motion, or (ii) 30 days after the date of service or waiver of service of the Amended
18 Complaint on such Defendant. In the event that the pending MDL Motion is denied, the
19 parties will promptly negotiate a schedule in good faith for the defendants to file
20 a responsive pleading or otherwise respond to the Amended Complaint.

IT IS SO ORDERED.

Anne Russell Brown

Anne R. Traum
United States District Judge

DATED: March 11, 2024